



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY**

**REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466**

Ref: 8P-HW

CERTIFIED MAIL - FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

Steven D. Landau
Manager, Environmental Affairs
Cotter Corporation
7800 E. Dorado Place, Suite 210
Englewood, CO 80111

Re: CERCLA Off-Site Rule Finding of Unacceptability
for Five (5) Proposed Units; 60-Day Notice of
Unacceptability for Impoundments Previously
Found Acceptable. Appeal Procedures.

Dear Mr. Landau:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) has completed its review of the Cotter Corporation request to evaluate five units at the Cotter Canon City Mill Facility pursuant to the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9621(d)(3)), and the criteria of the CERCLA Off-Site Rule (40 C.F.R. § 300.440). Based on our review, it is EPA's determination that the five units proposed by Cotter are unacceptable for receipt of off-site wastes generated under the authority of CERCLA. With this letter, EPA is also issuing a 60-day Notice of Unacceptability for the two impoundments that were previously found to be acceptable in August 2000.

In arriving at this determination, EPA has discussed the substantive issues in applying the Off-Site Rule at Cotter with the Laboratory and Radiation Services (LARS) Division of the Colorado Department of Health and Environment (CDPHE) the State. It is our understanding that LARS is addressing these issues in both a separate letter to you and the re-issuance process for Cotter's Radioactive Materials License.



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In a letter dated June 27, 2002, Cotter Corporation requested EPA to evaluate the acceptability of the following five units to receive CERCLA wastes at the Cotter Canyon City Mill Facility in Canon City, Colorado:

- ! The rail spur;
- ! Ore storage pad 1;
- ! Ore storage pad 2;
- ! Ore storage pad 3; and
- ! The mill processing circuit.

With this letter, EPA is notifying Cotter that these proposed units are unacceptable to receive any federally-directed CERCLA wastes. This finding of unacceptability, based on a number of factors discussed below, is effective immediately and will remain in effect until EPA provides written notice that Cotter has fully remedied the conditions that have caused this finding of unacceptability. These conditions are also discussed below.

With this letter, EPA is also issuing a 60-day Notice of Unacceptability for the primary and secondary impoundments. In August, 2000, in response to a similar request from Cotter, EPA had found these units acceptable to receive CERCLA wastes. Today's notice, issued pursuant to 40 C.F.R. 300.440.(d)(1), means that the impoundments will remain acceptable for 60 days after today's date. After 60 days have passed, they will become unacceptable unless EPA determines in writing that the conditions which have rendered them unacceptable have been remedied fully. Since the 60 days begins upon issuance (not receipt) of this notice, we have transmitted by telefax a copy of this letter on the date of issuance.

As you are aware, Congress and EPA established the Off-Site Rule to assure that federally directed CERCLA wastes would be sent only to those facilities that are environmentally sound. Under the Off-Site Rule, the expectation is that facilities deemed acceptable to receive CERCLA wastes should be properly permitted, should be in compliance with their permits, and should have no uncontrolled releases. These acceptability requirements are designed to prevent the aggravation of conditions at problem sites. A copy of the Off-Site Rule is enclosed for your review.

In this case, the determination of unacceptability is based on consultation with CDPHE-LARS. The consultation with LARS resulted in a finding that Cotter is not in full compliance with several State Radiation Regulations and license requirements that govern the handling of radioactive materials at the facility. Our consultation also resulted in a finding that there is an uncontrolled environmentally significant release at Cotter.

The following two items address Colorado requirements with which Cotter either is not in full compliance or has not provided sufficient information to assure a properly licensed facility and compliance with its license conditions. These two items apply to the acceptability status of both the proposed five units and the two currently acceptable impoundments.

- 1) RH 1.6 of the CDPHE Radiation Regulations requires that each licensee shall “maintain records showing the receipt, transfer, and disposal of all sources of radiation.” Cotter’s lack of full compliance with this requirement is addressed in a LARS Notice of Violation (NOV) dated April 23, 2002 (Item of Concern D), and in subsequent correspondence.
- 2) Pursuant to its authority under RH 3.9.2 of the CDPHE Radiation Regulations, LARS has stated that Cotter has not provided sufficient acceptance procedures for receipt of alternate feed materials. Cotter’s need to have adequate procedures for obtaining State approval prior to receipt of alternate feed materials is addressed in the NOV of April 23, 2002 (Item of Concern F), and in subsequent correspondence.

Another factor that supports the determination of unacceptability for all seven units at Cotter is the finding of an uncontrolled environmentally significant release at the large wooden counter-current decantation (CCD) tanks. During a EPA/LARS site visit at Cotter, EPA observed that the liquids weeping through the walls of one of the CCD tanks were running onto a deteriorating concrete pad under the tank and entering the soils beneath the tanks. An administrative control on that release has not been established pursuant to the criteria of the Off-Site Rule.

In addition to the above items, Cotter has been found to be in violation of its Radioactive Materials License with regard to conditions at the mill processing circuit. In a Notice of Violation dated December 12, 2002, LARS found that Cotter is in violation of License Condition 18.3.1 that requires the licensee to maintain each process, storage, containment, monitoring, and safety system in good working order. According the Notice, the large wooden CCD tanks were “observed to be in a state of disrepair,” and these tanks “showed evidence of leakage and extensive corrosion.” Tank #1 was observed “to be leaking directly from the side of the tank (not simply weeping) and the foundation of Tank #8 is crumbling.” This item applies to only the mill processing circuit.

As noted above, EPA has discussed these items in detail with the State, and it is our understanding that LARS is addressing them in separate correspondence and discussions with you. We strongly encourage Cotter to work with LARS to come into full compliance with all State radiation requirements as soon as possible. We also encourage Cotter to come into and maintain full compliance with all other facility requirements, including air emissions and health/safety regulations.

If Cotter remedies the items listed above, demonstrates that it has come into full compliance with all applicable requirements, and demonstrates that there are no uncontrolled releases, Cotter may again request acceptability status for these or other units. Upon such a request, EPA would consult again with Colorado and re-evaluate the acceptability status of any or all of the subject units. Any such re-evaluation would be based primarily on a Colorado determination whether Cotter is in full compliance with all applicable requirements.

Under the Off-Site Rule, there are certain appeal procedures that a facility owner/operator may exercise. Among these are:

- 1) The facility owner/operator may submit a written request for an informal conference with EPA to discuss the basis for the underlying lack of compliance and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. Pursuant to 40 CFR 300.440(d)(4), such a request must be received within 10 days¹ of issuance of this notice. If Cotter were to request an informal conference, EPA will provide the opportunity for such conference no later than 30 days, if possible, after the issuance of this notice.
- 2) The facility owner/operator may also submit written comments by the 30th day after issuance of this notice, in addition to or instead of requesting an informal conference.

If Cotter does not submit a written request for an informal conference or submit written comments specifically addressing this unacceptability determination, the primary and secondary impoundments at the Cotter facility will become unacceptable to receive CERCLA wastes on the 60th day after this notice is issued. As noted above, all other units at the facility remain unacceptable for the receipt of CERCLA waste.

If Cotter presents information, either by means of the informal conference or written comments, and EPA determines that the information provided is sufficient to show that Cotter has remedied all the items discussed above, EPA will inform Cotter in writing that the determination of unacceptability has been reversed. If Cotter presents information, either by means of the informal conference or written comments, and EPA determines that the information provided is not sufficient to show that Cotter has remedied all the items discussed above, EPA will inform Cotter in writing that the determination of unacceptability has not been reversed.

If EPA concludes that a reversal is not in order, Cotter may request a reconsideration of the unacceptability determination by the EPA Regional Administrator. Cotter's request for a reconsideration must be received within 10 days of notification of receipt of EPA's written response to either the informal conference or Cotter's written comments. A reconsideration, if granted, will be made by review of the record, by conference, or by other means deemed appropriate by the Regional Administrator. Reconsideration does not automatically stay the determination beyond the 60-day period. Cotter will receive notice in writing of the decision of the Regional Administrator. The Regional Administrator may decide to extend the 60-day period if more time is required to review a submission. Cotter shall be notified in writing if the Regional Administrator extends the 60 days.

¹ All time periods referred to in this letter are calendar days.

If an extension of the effective date of this notice for the impoundments is not granted by EPA, the transport of federally directed CERCLA waste to the Cotter facility will cease on the 60th day from issuance of this notice. If this Notice becomes effective, the facility will remain unacceptable until such time as the EPA notifies the owner or operator of Cotter otherwise.

If you have any questions, please contact Terry Brown, Region VIII CERCLA Off-Site Rule Coordinator at (303) 312-6419.

Sincerely yours,

{- signed 1/3/2003 -}

Kerrigan G. Clough
Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance

Enclosure

cc: David Butcher, CDPHE-LARS
Eugene Potter, CDPHE-LARS
David Geiser, Director Long Term Stewardship, Department of Energy
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